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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 371 (S/B) of 2003

State of Uttaranchal through Secretary,
Panchayat Raj,
Dehradun and others …… Petitioners

Versus

Sri Laxmi Singh Suyal and
Another …… Respondents.

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Coram: Hon'ble P.C. Verma, A.C.J.
Hon'ble Rajesh Tandon, J.

Dated: 07.04.2004

[Per Hon'ble P.C. Verma, A.C. J.]

This writ petition has been filed by the petitioners challenging the order-dated 28.03.2003 passed by the Public Service Tribunal, Uttaranchal in claim petition no. 176/T/2002 – Sri Luxmi Singh Suyal Vs. State and others.

In the claim petition before the Public Service Tribunal, Uttaranchal, claimant (the respondent no. 1) Laxmi Singh Suyal has prayed for quashing of the order dated 18.09.1997, contained in Annexure-7 to the writ petition, by which services of Sri Luxmi Singh Suyal were terminated. He was appointed as a skilled worker to discharge the duty of jeep driver by the petitioner no.3- District Panchayat Raj Officer, Nainital for a period of three months w.e.f. 28.01.1994 to 31.3.1994 vide order dated 16.02.1994. After expiry of the aforesaid period, the services of the claimant were extended from time to time till the impugned order was passed. The impugned order of termination was passed on the ground that the department no longer required her services. In lieu of one month's notice, he was offered one month's salary.

The Tribunal has held that the termination order was punitive in nature as the same was passed by the Appointing Authority who was motivated to terminate the services of the petitioner by the result of said enquiry in which he was indicted and held guilty.

Learned counsel for the petitioners submitted that the order of termination was termination simplicitor and not punitive in nature. The termination order was passed on overall assessment of work and conduct of respondent no.1 Sri Luxmi Singh Suyal. The Tribunal wrongly held that the motive of termination was the result of inquiry report in which respondent no.1 was indicted and held guilty.

On the other hand Sri A.K. Joshi, learned counsel for the respondent no. 1 submitted that the Tribunal has rightly held that the order was punitive in nature and could not have been passed without holding a department inquiry. The order was not termination simplicitor. He supported the judgment passed by the Public Service Tribunal, Uttaranchal.

The order of termination dated 18.09.1997 was passed that the services of the respondent no. 1 were no longer required by the department and he was offered one month's salary in lieu of one month's notice. This order was passed under the rule known as U.P. Temporary Government Servants (Termination of Service) Rule 1975. There is no word in the termination order, which may connect any misconduct of the respondent no.1, which could form the termination order to be punitive in nature. The termination order is termination simplicitor. The Public Service Tribunal, Uttaranchal, without any basis held that the result of department inquiry held against the respondent no. 1 was motive of termination order. Therefore, the termination order was by way of punishment. In the written statement, the statement has been made before the Tribunal that the respondent no.1 was given warning for disobedience of the various orders of the superiors and misconduct. Thereafter, for certain charges, inquiry was held. During the inquiry it was also found that the appointment of the respondent no. 1 was also illegal. The petitioner was not discharging his duties properly and was

habitual for disobeying the order of his superiors. He was also absent from duty unauthorisedly. These facts were taken into account while judging the general suitability of the respondent no.1 as to whether he was fit to be retained in service or not. Accordingly, services of respondent no. 1 were terminated.

In the case of State of U.P. and another Versus Kaushal Kishore Shukla reported in (1991) 1 S.C. C. 691 Hon'ble Apex Court held that "a temporary government servant has not right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant."

In view of the above, the termination being simplicitor not punitive in nature, Tribunal fell into error in holding the order of termination to be order of punishment, and cannot be sustained in the eye of law in view of the law laid down by the Apex Court in State of U.P. and another Versus Kushal Kishore Shukla (supra) and is hereby set aside.

The petition is allowed accordingly. No order as to costs.

(P.C. Verma, A.C. J.)

(Rajesh Tandon, J.)

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